82-2096

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO. _____

THOMAS W. MOORE, APPELLANT,

V.

MICHAEL N. KHOURIE &
DRAPER B. GREGORY ET AL., APPELLEES.

ON APPEAL FROM THE NINTH CIRCUIT
UNITED STATES COURT OF APPEALS*

JURISDICTIONAL STATEMENT*

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* CONCURRENTLY THIS CONSTITUTES ALSO BOTH A PETITION FOR WRIT OF CERTIORARI AND ALSO AN EXTRAORDINARY WRIT IN THE NAME OF 234 MILLION UNITED STATES CITIZENS IN A ONE TRILLION DOLLAR CLASS ACTION V. AN APPELLEES' CLASS THAT POSSESSES OVER TWENTY TRILLION DOLLARS OF ASSETS

Pursuant to USSC Rule 15.1 (c) the Table of Contents and Table of Authorities are contained on page 7.

*CONCURRENT PROCEEDINGS

Due to his 4/15/83 notice of appeal plus his pro se status, appellant is denied 18 days to perfect a Petition for Writ of Certiorari or an Extraordinary Writ, additionally appellant was denied 8 additional days by failure of the Ninth Circuit to properly notify appellant of his 3/31/83 filed denial of Petition for Rehearing. Appellant telephoned the deputy clerk of the U.S. Supreme Court to clarify Supreme Court Practice by Stern & Gressman 5th edition which indicates that all three methods are concurrently available to appellant (as long as he meets the time limitations). The Deputy Clerk informed appellant that only one method may be utilized. This is the reason that this jurisdictional statement is intended to act concurrently for all three

methods under all supportive jurisdictional statutes.

QUESTIONS PRESENTED

(1) Whether 234 million United States citizens in a pending related class action will be denied a jury trial to determine: if a trust fund is currently necessary to prevent a continuing fraud by almost every trial attorney, said fund will consist of one trillion, nineteen point six million dollars, said fund's committee of trustees will select: only legitimate claims or defenses, competent and diligent attorneys, pay hourly fees to said selected attorneys, pay necessary additional legal expenses, review progress of selected attorneys, require equitable contributions by clients, require equitable return from contingency award to fund upon either trial verdict or settlement, said fund will thereby provide the crucial missing factor in the justice system throughout federal and state courts?

(2) Whether (due to the absence of the

trial in Question (1) above resulting from a Res Judicata - improper interpretation of the 3/3/81 U.S. District Court "Allegedly Monitored Settlement" in C 78 1416 TEH) the pending related class action in (1) will not occur, thereby preventing the docket of the United States Supreme Court from being reduced from over 4,000 filings to less than 2,500 filings?

(3) Whether (due to the absence of the trial in Question (1) above resulting from a Res Judicata - improper interpretation of the 3/3/81 U.S. District Court "Allegedly monitored settledment" in C 78 1416 TEH) the pending related class action in (1) will not occur, thereby preventing the dockets of very federal and state Court from being reduced by a minimum of 50% of the currently filed civil suits?

(4) Whether (due to the absence of the trial in Question (1) above resulting from a Res Judicata - improper interpretation of the 3/3/81 U.S. District Court "allegedly

monitored settlement" in C 78 1416 TEH) that (after the previously mentioned 50% reduction in civil suits) the pending related class action in (1) will not occur, thereby preventing the remaining docketed suits to experience a 50% improvement in settlements prior to trial, this combination of (3) and (4) will effectively reduce current civil trial demands by 75%?

(5) Is not a summary reversal of both the U.S. District Court 10/1/81 filed order and also the 3/31/83 denial of Petition for Rehearing necessary to both accomplish the "interest of justice" contained in prior questions (1) through (4) for 234 million United States citizens in pending related class action and also to follow 100 years of United States Supreme Court precedent that the "winner" in the lower court is not entitled to "one penny additional" much less than the denial to 234 million United States citizens one trillion nineteen point six

million dollars of "prepared" legal representation at every federal and state trial?

(6) Is not a summary reversal of the U.S. District Court 10/1/81 filed order and the 3/31/83 denial of Petition for Rehearing necessary in light of both state and federal common law that interprets a "General Release" to exclude claims that appellant and all 234 million United States citizens possessed - but did not know or suspect until 6/14/82 i.e. one year three months after the 3/3/81 "settlement"?

(7) Does the 13 year docket record of three U.S. District Court-Suits, six Ninth Circuit U.S. Court of Appeals-Appeals, one Petition for Writ of Mandamus and two Complaints of Judicial Misconduct present a prima facie case that both Courts have become "Nobility" as denied by Article I of the U.S. Constitution?

(8) Does the record in C 78 1416 TEH and all three appeals, hereby appealed, indicate that two Acts of Congress - 28 USC

372 (c) and 28 USC 455 are declared unconstitutional - as inferred from the complete refusal to follow any portion of these Congressional Acts and does this not demand "supervision" pursuant to Article III of the U.S. Constitution by the United States Supreme Court by plenary hearings? .

LIST OF ALL PARTIES

In addition to cover page caption the appellants include all 234 million United States citizens, the appellees include the lower case defendants, Broad, Khourie & Schulz professional corporation for period of original cases, now a partnership, John W. Broad, Royce H. Schulz and Eugene C. Crew plus 486 individuals and firms joined in Index 19153/82 et al. plus a class of appellees that is at least eleven times larger than the 493 defendants in Index 19153/82 et al. Both the District Court and also the Court of Appeals were clearly given timely notice of the existence, as well as many of the actual names of many of

these "real parties in interest". Also the additional parties themselves were given actual or constructive notice at both the District Court and also the Court of Appeals.

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FLAT DENIAL, NO OPINIONS STATED.

JURISDICTION

U.S. District Court jurisdiction was grounded upon diversity of citizenship and excess of $10,000.00, excluding interest, in damages. Three timely filed notices of appeal were filed by appellant to the Ninth Circuit U.S. Court of Appeals. The 10/1/81 final U.S. District Court order was a result of an order by the Ninth Circuit - Demanding this final order. Appellant filed his notice of appeal on 10/14/81.

The Memorandum "final order" of the U.S. Court of Appeals was filed 3/4/83. A timely petition for rehearing by appellant was filed 3/15/83. Denial was filed on 3/31/83. Notice of appeal was filed on 4/15/83. Sixty day statute of limitations complied with 6/14/83 filing of this docu-

ment at the U.S Supreme Court. Pro Se petitioner would have been allowed 15 additional days to file a petition for Writ of Certiorari.

The jurisdiction of the U.S. Supreme Court is invoked pursuant to: (1) 28 USC Section 1252, (2) 28 USC Section 1253 (yes, appellant will show that a 3 member special District Court was convened), (3) 28 USC Section 1254(2) - (This is dangerous to appellant and the primary reason that both Petition for Writ of Certiorari and Extraordinary Writ are concurrently petitioned, (4) 28 USC Section 1651, (5) 28 USC Section 1652, (6) 28 USC Section 1872, and (7) 28 USC Section 1254(1).

CONSTITUTIONAL PROVISIONS AND RULES

(1) Declaration of Independence - "Trial by jury".

(2) Entire U.S. Constitution - "Preamble: establish justice" - "Article I: Congressional power to impeach", "no nobility shall be granted by the United

States" - "Article II: President-will-defend the constitution of the United States," - "Article III: (Federal) Judges-shall hold their offices during good behavior," "Supreme Court shall have appellate jurisdiction," - "Article IV: Full faith and credit shall be given in each state," - "Article VI: (Congress) and Judicial Officers, both of the United States and of the several states shall be bound by oath-to support this Constitution," - "Amendment 1: Right of People to petition for a redress of grievances," - "Amendment 4: Probable Cause," - "Amendment 5: No person shall be-deprived of-propterty, without due process of law," - "Amendment 6: In all criminal prosectutions, the accused shall enjoy the right-to be confronted with witnesses against him," - "Amendment 7: Trial by jury shall be preserved," - "Amendment 8: No unusual punishments inflicted," - "Amendment 9: Rights-Retained by the people," - "Amendment 10: Powers-Reserved-to the

people," - Amendment 14: No state-shall deprive-all United States citizens of-property without due process of law; nor deny to any person within its jurisdiction equal protection of the laws."

(3) Title 28 USC Section 372 (c) "entire law".

(4) Title 28 USC Section 455 "entire law".

(5) Federal and state common laws in Equity "Unclean Hands v. Standing to Receive Specific Performance."

(6) Denial of all Federal Rules of Civil and Appellate Procedure thereby declaring every act of congress that relates to this subject matter as unconstitutional.

(7) California Insurance Code Section 533 declared unconstitutional and all California Supreme Court interpretations of this law as pertains to liability of both corporations and their insurers for intentional torts by their executive employees declared unconstitutional

(8) Title 28 USC Section 1654 "entire law"

(9) California Penal Code Sections 630 through 637.2 "entire law"

(10) Refusal to bifurcate a trial where a punitive damage claim makes the alleged lack of wealth of defendent an issue prior to determination of liability of defendent, thereby inducing reversible prejudicial error in federal Court, and declaring bifurcation - unconstitutional.

STATEMENT OF THE CASE

"Res Judicata" issue relating to both Khourie's acts and also Gregory's acts was raised by appellant in the name of appellants both at the District Court and also at the Ninth Circuit. Appellant and appellants were unaware of their claims which were only discovered on 6/14/82 (see appendix p(s) 20a through 22a). However the District Court - did not "monitor" the 3/3/81 "settlement" to the degree that the District Court claims. Magistrate Goldsmith

"monitored the settlement" that was negotiated on 3/3/81. Only Magistrate Goldsmith conveyed the terms of this "settlement". Judge Henderson knew nothing about the terms or understanding between appellant and appellants and appellees and appellees' class. The only issue "settled" by Magistrate Goldsmith was the "personal injury" allegations raised by Gregory (see appendix p(s) 16a through 20a). Both the District Court and also the Ninth Circuit know this but refuse to limit the 3/3/81 "settlement" to these terms that were "settled". This is the "Res Judicata" issue that appellant disclosed to the District Court and also to the Ninth Circuit - prior to 6/14/82. After 6/14/82 appellant and appellants disclosed the "class action" that contains the "newly discovered claims" against appellees and also the appellees class (see appendix p(s) 20a through 22a). Moreover, appellant actually disclosed the 493 defendants representative class to the

Ninth Circuit. Therefore, the "Res Judicata" issue now raised by appellees in Index 19153/82 (the related pending class action) was adequately disclosed to the lower federal Courts to enable appellant and appellants (234 million U.S. citizens) to raise this issue in Questions 1 through 6 in this request to the United States Supreme Court for either summary reversal of the 10/1/81 District Court order and the 3/31/83 summary denial by the Ninth Circuit or plenary hearings on these six questions.

Appellant - Pro Se - filed as plaintiff C 78 1416 on 6/28/78. Appellant followed a model complaint. Therefore plaintiff pro se's complaint alleging Negligence and Breach of Contract was close to perfect in both form and also content for a diversity suit in federal Court. Additionally plaintiff pro se conducted discovery and filed a motion for partial summary judgment both of which documents followed model formats and consequently were also almost perfect in

form and format. Appellees' October 1982 brief admits that plaintiff pro se diligently prosecuted his negligence/antitrust complaint from 6/28/78 through 1/22/79. Therefore, the District Court possessed no grounds much less justification to force a lawyer down appellant's throat - especially since appellant's complaint in C 78 1416 was solely concerned with malpractice by lawyers who had previously represented appellant for six years in that same federal Court.

Moreover, pursuant to Act of Congress: Title 28 USC Section 1654 - the Constitution does not force a lawyer upon a pro se plaintiff. Additionally most circuits of the U.S. Court of Appeals have ruled: "The right of self representation is protected by the (U.S. Constitution's) Bill of Rights."

In the face of the before stated facts and law the District Court - rentlessly demanded - that appellant obtain a lawyer to represent him in C 78 1416. On 1/22/79 - soley due to the demands of the District

Court - Gregory filed an "Association of Attorney" in C 78 1416. After minimal discovery Gregory on 9/14/79 stated in open Court (recorded by the Court reporter) that Gregory - independent from any calculation by appellant - calculated the value from a jury verdict of appellant's 6/28/78 complaint to be in excess of $7,000,000.00.

The District court entered an order and opinion on 7/10/80 (see Appendix p 6a) in which the District Court fully admits that the Court "Urged (appellant pro se) to obtain (Gregory) and that (Gregory) has dropped (appellant's $7,576,070.00) Negligence/Antitrust suit because it is too much of a strain on (Gregory) to pursue." This admission constitutes three further admissions which are: (1) That the relentless demand that plaintiff pro se obtain a lawyer from 6/28/78 through 1/22/79 made the District Court a party (as a representative of the United States) to the proceedings in C 78 1416, (2) that both 28

USC 1654 and the "Bill of Rights" are both ruled to be unconstitutional, and (3) that the District Court's acts "but for" and "are the direct and proximate cause" of appellant pro se losing a valid $7,575,070.00 Negligence/Antitrust civil claim.

Said District Court admissions fulfill every element for appellant's "as of right plenary hearings before the United States Supreme Court pursuant to 28 USC Section 1252."

Appellant asserts herein three - equally factual but independent grounds for "as of right plenary hearings pursuant to 28 USC Section 1252". Appellant filed two Complaints of Judicial Misconduct and one Petition for Writ of Mandamus. An agent of the United States was named in all three filings, as a party both at the District Court and also at the Court of Appeals. Appellant invokes also Act of Congress "Bill of Rights" "Article III of The U.S. Constitution" and also Jurisdictional grounds of

original jurisdiction - pursuant to Title 28 USC Section 1872. Not only appellant but also all 234 million United States citizens are alleging misconduct by both the Northern District of California and also the Ninth Circuit.

Appellants' first Complaint of Judicial Misconduct cited - the District Court solely - destroyed three sets of timely filed motions by appellant - two of which appellant possesses not only the copies of the documents but also a dated and signed receipt (U.S. Postal Service) addressed directly to Judge Thelton E. Henderson. In addition appellant possesses the presented copies of all thirteen sets of documents, nine other dated and signed U.S. postal receipts also addressed directly to Judge Henderson, that provide prima facie evidence that 10 of appellant's District Court motions were delayed in docketing by up to FOUR MONTHS. This delay was intended to cause the 6/1/81 two District Court orders

to appear to have been entered - without notice and knowledge that appellees' (having participated in three felonies since 8/78) possessed "unclean hands" and therefore possessed no "standing" to receive any hearing in a Court in Equity - much less "specific performance" of an alleged Court monitored "settlement" on 3/3/81.

These docketing delays were also intended to cause both the USCA and this Court to believe that appellant did not assert both malpractice and intentional torts by Gregory in two April 1981 motions to the District Court.

These intentional docketing delays were solely intended to provide a smoke screen of legality to both of the 6/1/81 District Court orders. Had appellant's motions been correctly docketed according to appellant's postal dated and signed receipts, neither 6/1/81 District Court order could be grounded upon any legal justification.

Appellant provided "newly discovered

evidence" in April 1981 to the District Court of these three felonies. In 1977 appellant presented evidence, that the local FBI office in New York reported, which constitute "probable cause" to request an investigation by the FBI in San Francisco. However appellant's 1981 "newly discovered evidence" was much more conclusive.

All of these documents and facts were presented in appellant's first Complaint of Judicial Misconduct. A summary denial occurred thereby entitling appellant to hereby assert Acts of Congress 28 USC Section 372(c) and 28 USC Section 455, being ruled as unconstitutional and entitling appellant to "as of right jurisdiction pursuant to 28 USC Section 1252 and also 234 million U.S. citizens' original jurisdiction pursuant to 28 USC Section 1872."

Appellant's Petition for a Writ of Mandamus immediately followed the above Chief Judge's summary denial. Every fact and document was reasserted. Only the agent

of the United States was alleged to be "any U.S. employee who perpetrated the 13 sets of document destruction and four months delay in docketing" of the other ten sets of documents at the U.S. District Court. Again a summary denial occurred at the Ninth Circuit. Again this entitles appellant to rights pursuant to 28 USC Section 1252 and 234 million appellants' rights pursuant to 28 USC Section 1872.

Appellant's second Complaint of Judicial Misconduct of nineteen U.S. Court of Appeals Judges was again addressed to the Chief Judge of the Ninth Circuit. Two motion denials were stressed. However eight consecutive prior summary denials acted as supplemental evidence. The two motion denials that were stressed deal with the following facts. Although Federal Rule of Appellate Procedure Rule 31 (a) entitled appellant - 40 days to prepare and file his opening brief and excerpt of the trial Court clerk's record, appellant was notified that

"unless he filed both documents within 14 days that his three appeals would be dismissed" (see appendix p 9a, item 6).

Appellant met this - incredible - filing date.

Appellees were then granted 54 days in which to file the same two documents. But FRAP 31(a) only entitles appellees 30 days to file. Appellant filed a motion to dismiss appellees' briefs as being 24 days late, (never mind the 40 days - beyond which appellant was required to file).

Appellees, in their 24 day late brief, utilized the same 13 sets of documents that appellant was denied (in three motions, one Complaint of Judicial Misconduct and one Petition for Writ of Mandamus). Appellant filed a second motion to strike all reference to these 13 sets of documents. Appellant cited 28 USC Section 455 "total bias and prejudice" if these documents were allowed to be used by appellees while being denied to appellant.

The USCA summary denial of both of appellants motions (see appendix p 13a, item 9), was the primary grounds for appellant's second Complaint of Judicial Misconduct. This Complaint was itself summarily denied. This acts as appellant's and appellants' (234 million U.S. citizens) invoking the United States Supreme Court jurisdiction under both 28 USC Section 1252 and 28 USC Section 1872.

Appellants (234 million U.S. citizens) under the subject "Constitutional provisions and Rules" cited Article I of the Constitution. Unless Index 19153/82 is allowed to proceed as a class action for the purpose of obtaining the type of system of justice described in the Constitution not only has the federal Court system become the "Nobility" denied by Article I but also the United States Supreme Court has declined to exercise the "supervision" role guaranteed to every one of the 234 million U. S. citizens under Article III of the Constitution.

Clearly there is some relationship between the federal Court System and the 234 million U.S. citizens. Moreover, "Original" jurisdiction pursuant to Article III - "other public ministers" includes the lower Courts while also invoking Title 28 USC Section 1872.

Immediately upon appellant's receipt of the summary denial of his second Complaint of Judicial Misconduct, appellant moved the Chief Judge to convene a special 3 Judge District Court. Title 28 USC Section 455 wording was cited ie. "Total bias and total prejudice" as evidenced by the 19 consecutive summary denials of petitions, complaints and motions both by the District Court and also by the Ninth Circuit. The composition of the 3 Judge panel (which specifically denied appellants' motion for oral argument rights pursuant to FRAP Rule 34 in C.A. #81 4562) satisfies both a 3 Judge special District Court as well a Ninth Circuit "as of right" appeal Court. There-

fore appellants (234 million U.S. citizens) assert jurisdiction "as of right" pursuant to Title 28 USC 1253 and "original" jurisdiction pursuant to Article III, Section 2 of the U.S. Constitution.

The Case facts that invoke 28 USC Section 1254(2) are divided into two separate California statutes and two separate series of facts. Appellants (234 million) fear invoking 28 USC Section 1254 (2) because its narrow interpretation may cause the Court to deny a plenary hearing to the most important "Res Judicata" issue raised first in both federal Courts by appellant and now raised by appellees in Index 19153/82. Consequently, appellants (234 million) concurrently invoke either Petitions for a Writ of Certiorari or an Extraordinary Writ (both to be examined and cited later).

The first California Statute that was declared unconstitutional is California Insurance Code Section 533. Appellant is not citing the Ninth Circuit interpretation

of this Statute which occurred in September 1973. Appellant is citing California Supreme Court ratification of the Ninth Circuit 1973 interpretation as grounds for invoking 28 USC Section 1254(2). This eliminates any "inter or intra Ninth Circuit disagreement" as an issue for appellees.

The California Supreme Court has ratified the Ninth Circuit 1973 interpretation of this Statute to mean that both Corporations and their insurers are liable for willful or tortious acts by chief executives in letters that were not discussed with other top executives of that Corporation under the theory of "vicarious liability". Appellants' first two (of three total) issues in their opening brief addressed this precise interpretation. Appellees' answering briefs admitted the truth of both of appellants' issues.

The 3 Judge panel both on 3/4/83 and on 3/31/83 declared California Insurance Code Section 533 interpretation by the California

Supreme Court as unconstitutional. The 3/4/83 order used the smoke screen that the appellees were a "partnership" and not a "Corporation" to cover up its declaration of unconstitutionality.

Appellants' 3/15/83 Petition for Rehearing provided no "out" for the 3 Judge panel. Appellants provided 11 copies of insurance policies that show that "throughout the time period relating to the tortious acts of appellees - appellees were a Corporation". In addition appellants provided documents to the 3 Judge panel that show that - at least one of the other three top executives of the Corporation was totally unaware of the 9/22/72 Corporate executive letter by Khourie to appellant - as late as 1979 i.e. 7 years after this letter was mailed. Additionally appellants provided documents that show that the personal injury damage done to appellant was solely due to this 9/22/72 letter (that was settled by the

3/3/81 allegedly Court monitored "settlement").

The 3/31/83 summary denial does not even attempt to smoke screen its unconstitutionality ruling of the California Insurance Code Section 533 Statute.

The second unconstitutionality ruling also occurred concurrent with the filing of the 3/31/83 summary denial. The California Statute declared unconstitutional is California Penal Code Sections 630 through 637.2. The specific portion of this Code declared unconstitutional is the right of U.S. Citizens to civil jury examinations that are untainted by prejudicial reversible error. More specifically the right in federal Court to have the issue of liability tried prior to allowing the defendant to assert total lack of wealth (a perjured claim anyway).

Appellants raised this issue in their 3/15/83 Petition for Rehearing. Appellants cited both facts and law that justified

their request for reversal of the 6/9/78 Ninth Circuit "opinion" relating to this set of facts. Moreover one of the Judges who sat on the 3 Judge panel on 3/31/83 also rendered the 6/9/78 "opinion." Consequently, the 3/31/83 summary denial acted to declare two different California Statutes - unconstitutional. Appellants (234 million U.S. citizens) both invoke 28 USC Section 1254(2) and also request discretionary plenary hearings under both 28 USC Section 1254(1) and 28 USC Section 1652.

Appellant and appellants are concurrently requesting jurisdiction by the United States Supreme Court under three methods. Jurisdictional Statement (of the Case) facts and statute elements are before stated. Facts relating to the other two methods of obtaining a plenary hearings by this Court are stated below.

Title 28 USC Section 1651 (a) and 1652 are cited. All facts, previously stated, apply to both of these methods of requesting

this Court to either issue a summary reversal of both the 10/1/81 District Court order and also the 3/31/83 USCA summary detail or allow plenary hearings over these matters. Where federal law, the U.S. Constitution or federal rules have been shown to have been disregarded by the lower Courts 28 USC Section 1651(a) is asserted. Where California law or Statutes was previously shown to have been disregarded by the lower Courts 28 USC Section 1652 is asserted.

THE QUESTIONS ARE SUBSTANTIAL

What possible justification caused the District Court and the Ninth Circuit to file final orders that they knew would prevent the United States Supreme Court from reducing its workload by 50%? What possible justification caused these final orders to be filed in light of the Ninth Circuit's clear knowledge that the appellees' class would attempt to falsely use these orders to deny 234 million United States citizens - one trillion nineteen point six million

dollars (plus) of diligent legal representation?

What possible justification induced final orders that prevent the elimination of most of the problems that daily face the entire system of justice throughout this United States not only in federal Courts but also in State Courts?

Many factors, known to every Judge and trial attorney, will assist Index 19153/82 in accomplishing these objectives. Every competent trial attorney knows that she/he can only provide diligent prosecution or defense for a limited number of cases. Only alleged trial attorneys, who are both lazy and also incompetent desire the "lottery system of justice" that exists throughout the Courts today. Judges know that the great majority of cases that are brought and which clog our entire justice system should either never have been brought or should be settled prior to trial. The problem is that only the attorneys (and their clients) know

(1) which of the 5% of the cases are valid. (2) which 95% are either valueless or are correctly valued by one party-but due to the low trial preparation of most "have not" client's alleged trial attorneys - the attorney for the adversary "rich" client knows that due to the poor preparation of his opponent that she/he is very likely to win in this "lottery system of justice".

Judges (especially Judges who possess only three months knowledge of a case that has lasted for 17 years have absolutely no background to force an alleged "settlement" upon a plaintiff - as was done to me on 3/3/81) attempt to resolve this dilemma by forcing every plaintiff to settle. Where the plaintiff's attorney is totally unprepared to prosecute his client's case (as Gregory was due to Gregory's sole interest in obtaining a "settlement" regardless of how unjust the sum of that "settlement" was to his client) the Judge's force becomes

impossible to withstand - as also happened to me on 3/3/81.

Once every trial attorney knows that his opponent will be fully prepared to try or defend the adversary client's case both attorneys and subsequently - clients - will stop continuing cases that they are going to fully pay for. Not only will the number of cases filed drop off to an insignificant figure but also "rich" clients will much more likely "settle" for a just figure prior to trial. The "Lottery system of justice" existing today will slowly but surely evaporate.

Appellants' (234 million United States citizens) Questions 7 and 8 require true "profiles in courage" of all nine United States Supreme Court Judges. Peer pressure by 710 federal Judges will be intense. Also there are political implications.

Each United States Supreme Court Justice should examine her/his conscience. Did she/he swear to uphold the 710 other

federal Judges to remain as "Nobility" or did she/he swear to uphold the United States Constitution for all 234 million United States citizens?

CONCLUSION

All 234 million United States citizen appellants request either summary reversal or plenary hearings on the 10/1/81 alleged District Court monitored "settlement" final order. All 234 million United States citizen appellants request summary reversal or plenary hearings on the 3/31/83 summary denial by the Ninth Circuit.

The best solution is to rephrase the 10/1/81 District Court order according to the precise terms that were - in fact settled on 3/3/81. These terms are precisely worded in appendix p(s) 10a through 12a which come directly from part three of appellants opening brief to the Ninth Circuit. This will solve the "Res Judicata" problem.

All 234 million United States citizens request Article III of the U.S. Constitution "supervision" of both the District Court and also the Ninth Circuit to stop this "Nobility" class status denied by Article I of the United States Consitution.

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V.

MICHAEL N. KHOURIE &
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APPENDIX BY APPELLANT*

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* ALSO BY PETITIONER FOR CERTIORARI &
EXTRAORDINARY WRITS

Appellants "Notice of Appeal" requested that the entire record be certified and transmitted to the United States Supreme Court. Due to the number of Questions, the number of factual issues and the number of Statutes invoked by appellants this Appendix requires almost every document held by the Court of Appeals. However, in a "good faith" effort to comply with USSC Rule 15.1(j) this separate appendix is filed. "Brevity" demanded by the United States Supreme Court precludes the approximately 600 pages of Appendix necessary to properly cover each of the issues in appellants "Statement of the Case". Therefore appellants have "annotated" both this Table of Contents and also the documents that are included herein.

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TABLE OF AUTHORITIES

1. California Supreme Court ratification of Dart v. Libery Mutual 484 P 2d 1295..... 9a,12a,15a
2. Federal and outside N.Y. State ratification of Rupert v. Sellers 368 NYS 2d 904, 48 AD 2d 265..... 16a

FEDERAL COURT ORDERS DECLARING BOTH FEDERAL AND ALSO STATE STATUTES AS UNCONSTITUTIONAL

(Denials by USDC of 3 motions by appellants)

"1. United States District Court (hereafter USDC) C 78 1416 SW Filed 7/10/80 - Opinion and Order - This action arises out of two earlier actions in which defendants represented plaintiff as plaintiff's attorneys. Plaintiff initiated this suit in propria persona. At the urging of the Court plaintiff obtained (Gregory). (Gregory's) recent filings disclose

(Gregory's) intent to drop the malpractice claim as being - too much of a strain to pursue."

(12/2/80 USDC denial of 4th motion)

(3/3/81 USDC denial of 2 petitions and 5th motion that notify USDC of 5th, 6th & 7th amendment violations plus 3 felonies perpetrated by appellees.) (Omission from docket and destruction of 6th through 8th motions that provide four documents in appellees' handwriting as new evidence of 3 prior felonies by appellees that occurred in the federal District Court documents room plus fraud, collusion and malpractice claims against Gregory.)

(6/1/81 USDC, 2 filed orders that rule the 5th, 6th and 7th Amendments as Unconstitutional, that prima facie evidence of 3 felonies does not constitute "unclean hands" and that Jurisdictional Rules allowing a jury trial of Gregory's fraud, collusion and malpractice are Unconstitutional.)

"2. USDC C 78 1416 TEH Filed 7/9/81 -

Judgment - Pursuant to an Order of this Court made on June 1, 1981, Judgment is hereby rendered in favor of Draper B. Gregory against Thomas W. Moore in the sum of Forty Thousand Dollars."

"3. Notice of Appeal - of the July 9, 1981 Judgment - to the United States Court of Appeals for the Ninth Circuit (hereafter USCA) - filed 7/21/81."

(USDC 7/30/81 "stay" overturned by USCA)

"4. USDC C 78 1416 TEH Filed 10/1/81 - Judgment - 'claim release' - defined as (b) pre-trial statment claims (c) 'attempted to file' claims (d) January 29, 1976 'counter-claim' claims (specifically excluded from C 78 1416 TEH by 12/2/80 Order) (e) fraud or other misconduct including all claims for compensatory and punitive damages (specifically excluded from C 78 1416 TEH by 12/2/80 Order)."

"5. Notice of Appeal to USCA of 10/1/81 Judgment filed 10/14/81."

(USCA denial of 9th through 12th motions and 1st Complaint of Judicial Misconduct relating to 13 sets of USDC pleadings and evidence - either destroyed or delayed up to four months in docketing at USDC)

"6. USCA C.A. 81 4389 et al. denial of Writ of Mandamus (and overrule of FRAP Rule 31(a)) 14 days to submit Opening Brief or all 3 appeals will be dismissed filed 8/6/82."

"7. Appellants Opening Brief and 63 page excerpt of trial Court clerk's record less destroyed and delayed docketed 13 sets of pleadings filed 8/19/82 - Certificate that over 2,000 firms are 'real parties in interest':

Issue One: Did the Court err in interpretation of California Insurance Code Section 533, yet having erred, was not the precise limitations as to the 3/3/81 "settlement" thereafter completely defined by this (USDC) Court interpretation?

Issue Two: Does failure to perform minimum legal research on the most important legal issue before the (USDC) constitute prima facie legal malpractice, where this failure to perform is the direct and proximate cause of loss to (Gregory's) client of $7,466,070.00, with notice to (USDC) of this malpractice, should Court directed attorney fees be reversed due to lack of jurisdiction precedent of the Ninth Circuit (in #76 2134 Filed 6/9/78)?

(Res Judicata is the underlying issue in both of these first two issues raised at the USCA both with regard to Khourie's fraud and collusion and also with regard to Gregory's fraud and collusion. Appellants clearly distinguished between the 'negligence' claim and 'fraud and collusion' claims relating to Gregory under the term 'malpractice'. Summary reversal of #76 2134 with no justification given for this reversal.)

Issue Three: What did $110,000.00 -

3/3/81 - 'settlement' buy appellees? If (appellees') 10/1/81 wording is affirmed no end of improper interpretations might be asserted in the future. Proper wording (a) All causes of action contained in the 6/28/78 complaint. (b) All causes of action contained in the 10/24/79 1st amended complaint. (c) All causes of action authorized by (USDC) to be presented to the jury contained in any pretrial statement, in C 78 1416. (d) Specifically excluded from this settlement is any cause of action not accepted by this (USDC). This includes (i) all intentional torts (ii) collusion (iii) exemplary or punitive damages (iv) all vicarious liability of BKS for any of (i) through (iii). (5) Each party shall pay his own costs through 6/17/81. (6) Appellees will compensate appellant at the legal interest rate from 6/17/81 (when appellant filed a demand notice with the Court (USDC) through the date that appellant receives $110,000.00. (7) Appellees will compensate

appellant for all reasonable expenses that appellant incurred in the prosecution of 3 appeals plus this appeal to the Supreme Court."

(Again appellants' wording in lower Federal Courts deals directly with the issue of 'Res Judicata' in pending related class action, Index 19153/82.)

"8. Appellants Reply Brief filed 11/1/82 at USCA. Appellants filed a 'notice of related cases' citing Index 19153/82 and actually included the list of 493 firms that represent the appellees' class in Index 19153/82. Moreover the USCA was clearly notified that an appellants' class action naming all 234 million U.S. citizens was demanding a jury trial on the 'Res Judicata' issue and that a trust fund would 'protect the rights of U.S. and foreign citizens with the proceeds from Index 19153/82."

Consequently thereafter - each act by the USCA/3 Judge District Court was done with notice and knowledge of the enormous

impact that each of that Court's acts would have upon the entire system of justice throughout the U.S. ie. They knew what they were doing and they - dared the United States Supreme Court to try to stop them.

"9. USCA C.A. 81 4389 et al. Filed 11/9/82 - 'Appellants motion to "dismiss" appellees and to strike appellees' briefs and supplemental excerpts of record are denied."

(If the United States Supreme Court will - ever - invoke Article III and USSC Rule "supervison" over clearly unconscionable acts of lower Federal Courts, this 11/9/82 summary denial with notice and knowledge of this 'Res Judicata' issue in Index 19153/82 'related case' 234 million U.S. citizen appellants class action and twenty trillion dollar asset appellees' class, now is the time for the United States Supreme Court to invoke this "supervision" power.)

(Chief Judge denial of 2nd Complaint of Judicial Misconduct that covered directly

the 11/9/82 USCA 2 motion summary denial plus the 16 prior motion, petition and complaint denials.)

"10. USCA Chief Judge denial of FRAP Rule 34(b) to allow appellants to explain two California Statutes: appellant's "Emergency Motion -- For Ruling -- is denied."

(A 3 Judge District Court was requested by appellants due to the 19 consecutive "bias and prejudice" denials. Chief Judge convened this 3 Judge panel.)

"11. USCA/3 Judge District Court panel filed 3/4/83 'Memorandum' (California Insurance Code Section 533 as interpreted by the California Supreme Court) does not apply because BKS was a partnership (and not a corporation) - making Khourie's acts - automatically ratified."

"12. Appellants Petition for Rehearing filed 3/15/83: 11 insurance contracts showed that from 8/11/72 through 4/15/78 - BKS was a corporation and not a partnership. Crew's 1979 deposition showed that

even in 1979 that Crew (one of four BKS corporate executives) - knew nothing of Khourie's 9/22/72 corporate executive letter to appellant. Eleven pages of Kathryn Kirby's M.D. deposition taken by Bishop in C 78 1416 (appellees class) provided notice to the 3 Judge panel/USCA that Khourie's 9/22/72 letter was the sole cause of appellant's personal injury damage that was THE ONLY matter "settled" by Magistrate Goldsmith on 3/3/81."

(In effect the above evidence - eliminates - all possible alternative justification - of the subsequent 3/31/83 summary denial - other than a ruling that California Insurance Code Section 533 as interpreted by the California Supreme Court ratification of Dart supra. is UNCONSTITUTIONAL.)

"12. (Continued) Appellants in pages 9 through 12 raised the issue that the 6/9/78 USCA 'opinion' ruled California Penal Code Sections 630 through 637.2 - treble civil

jury damage awards as unconstitutional. The - out of N.Y. State affirmations of Rupert supra. were stressed where a bifurcated trial is required to avoid reversible prejudicial error to occur where a defendent is allowed to plead poverty to a jury where a punitive damage claim is raised in Federal Court - prior to the jury's determination of liability."

"13. 3 Judge District Court/USCA filed "Order" on 3/31/83 - Appellant's petition for rehearing is denied."

(Two California Statutes summarily declared unconstitutional.)

"14. Appellants (234 million U.S. citizens) Notice of Appeal to the United States Supreme Court filed April 15, 1983 with request that the entire record in all three appeals be certified and transmitted to the United States Supreme Court."

"15. Excerpts from Appellants (234 million U.S. citizens) Reply brief filed 11/1/82 at USCA. No Court Reporter was

present, at any time, throughout the conference before Magistrate Goldsmith - Bishop was - unwilling to swear as to what Bishop said at the (following) hearings (that was recorded) before Judge Henderson. In fact, neither Bishop nor appellant made any statement about any "release" of "anything" before Magistrate Goldsmith - Bishop was "surprised" by appellant's counter-proposal to Bishop through Magistrate Goldsmith. Bishop's "General Release" 2/26/81 offer is admitted (by Bishop) to have been rejected by appellant. Bishop states: 'The ($110,000.00 General Release) settlement offer was communicated by Gregory to appellant, but appellant refused to accept the offer.' (BKS's brief p. 8 L. 24 & 25).

Thereafter, appellant - through - Magistrate Goldsmith, made a new offer to Bishop on 3/3/81, after Bishop had been fully informed of appellant's intent by means of appellant's 3/2/81 motion received 2/28/81 by Bishop and by Bishop's presence

at (the) early hearing on 3/3/81 between Judge Henderson and appellant where Bishop learned appellant's clear intent to sue BKS for fraud and exemplary damages.

Bishop's three attempts to support Bishop's allegation (that a 'General Release' was agreed to by appellant on 3/3/81 before Magistrate Goldsmith) - fail of their own weight - (appellant then examines each recorded statement and writing presented by Bishop to support his allegation, including the last statement before Judge Henderson, in each case appellant shows the falsity of each of Bishop's alleged supporting evidence including the agreement by appellant before Judge Henderson) - Appellant shows that his interpretation of Bishop's words "all claims against my clients" in appellant's mind related only to the personal injury claims that Magistrate Goldmsith - solely knew and addressed - since these were the only claims that the insurance companies were accused of

on 3/3/81 - following Judge Henderson's denial of appellant's 3/2/81 motion on 3/3/81.

Magistrate Goldsmith did not know - anything - about appellant's 3/2/81 motion. Therefore Magistrate Goldsmith knew nothing about appellant's intent to sue BKS for fraud and exemplary damages. The only issue 'settled' or even known by Magistrate Goldsmith was the personal injury issue. Appellant interpreted Bishop's words 'my clients' to mean the insurance companies. Since from 6/28/78 through 3/3/81 Bishop continuously notified both appellant and the Court that Bishop - solely - represented the insurance companies. Almost 50% of the pleadings in C 78 1416 deal with this issue that Bishop - only represented the insurance companies. The entire issue of California Insurance Code Section 533 is totally dependent upon Bishop only representing insurance companies and NOT BKS. Therefore when Bishop asked for a release of all

claims against 'my clients' - the only possible interpretation by appellant is that Bishop intended to relieve the insurance companies of liability for personal injury damage done to appellant by Khourie's 9/22/72 letter to appellant. Moreover, both Gregory and Bishop voluntarily absented themselves from the entire discussion between Magistrate Goldsmith and appellant, consequently Gregory's "assume General Release" statement before Judge Henderson had no legal meaning since after 2/26/83 Gregory declined to act as appellant's representative in 'settlement' negotiations. Appellant acted to make his own offer on 3/3/81 through Magistrate Goldsmith. Bishop - with notice and knowledge, accepted appellant's counter-offer."

"16. Excerpts from the related case disclosed to both lower Federal Courts that support appellants request for a summary reversal of the 10/1/81 USDC order and the 3/31/83 - 3 Judge panel denial - On 12/6/81

appellants contacted Richard W. Rosen, Esq. in New York to determine if any cause of action for fraud and collusion could be filed in New York against the appellees' class. From 12/6/81 through 6/14/82 Rosen cross-examined appellant's mind and documents. Rosen rejected numerous theories by appellant. Rosen's cross-examination exploded appellant's sub-conscious discovery on 6/14/82. A six page legal size single spaced memorandum was submitted by appellants on 5/14/83 in Index 19153/82. This document shows the 'larger fraudulent scheme' perpetrated by Khourie in collusion with the appellees' class between 6/7/70 and 6/18/70 ie. before any attorney/client contract existed between appellant and Khourie. The six page memorandum is dated 6/14/82 and states that the information contained thereon only became known to appellants 'within the past two days'. This 5/14/83 motion also notifies both the Court and also the appellees class that appellants intend

to increase their exemplary damage claim from One Billion Dollars to One Trillion Dollars. Appellants present two additional sets of New York facts that support the 6/14/82 "accrual discovery" of the 'larger fraudulent scheme'. In addition two affirmative defenses are raised by appellants to the effect that appellants had received no prior notice of this 'larger fraudulent scheme' until 6/14/82.

Even if 'Gregory's asserted General Release' were true for the 3/3/81 settlement (and there was no meeting of the minds as to any general release) - 100 years of United States Supreme Court precedent as well as common law of "general releases" do not permit the appellees class from receiving benefits for claims that appellants neither knew nor suspected on 3/3/81. The winners below are not permitted to "one penny more" than they agreed to in "settlement" on 3/3/81."